

**FDOT Build America, Buy America (BABA): Implementation Guidance for  
Projects with Federal Funding**  
Questions and Answers

- Q What does APL stand for?  
A Approved Product List
- Q How do you see these changes affecting utilities that have reimbursable rights within the project limits?  
A If there are federal funds tied to the project, the utility has to comply. It's a self-certifying process. EV charging stations are getting a waiver.  
<https://www.fdot.gov/programmanagement/utilities/buyamerica.shtm>
- Q What are the chances of Federal funds added to a contract once it has gone to construction?  
A It varies. We are working with the FDOT Work Program to obtain more guidance. At any point, the District Work Program will be able to provide project/contract specific answers. It doesn't usually happen since the construction contract would have been in compliance with the Federal contracting requirements, like attaching FHWA 1273 and DB wages, etc. The only way it could happen is if the contract complies with all Federal requirements at the time of award and execution.
- Q Can aggregates be used for landscaping also? (Non-participating)  
A For aggregates, BABA uses the term "exempt". So, the landscape aggregate would be exempt.
- Q The reference to Memo 22.11, is that to DCE Memo 22.11? And if not, where may I find the Memo M2-11?  
A No, it's not DCE. This is a memo from the White House, Office of Management & Budget, and here's the link:  
<https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>
- Q Were there any comments from OMB regarding assembled in Mexico?  
A So far, the guidance we have received is that Canada and Mexico are not included in American made.
- Q Do we anticipate this affecting the extreme production times that we are currently experiencing?  
A We will be watching various products that are known to have limited American production. As availability issues are identified, we will work with FHWA for guidance/waivers/alternative designs.
- Q Is BABA applicable to State Funded (only) CIGP, SFGA projects also?  
A BABA is not applicable to state funded programs IF prior phases or future phases also had/will have no federal funds.

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- Q For procurement review of transit agency's third-party contracts, FDOT Transit Department reviews Federal Clauses which for construction include a Buy America clause. We received from languages and clauses from Central Office FTA that are required to be in third party contracts from transit agencies (receiving state or federal funds for construction). Will these third-party contracts need to have the required Buy America language in their contracts, as well as any flow down subcontracts?
- A OGC sent notice in December 2022, once the updated FDOT Specification was published that all department agreement templates used for federally funded projects will be updated in the next few months.
- Q Can you advise what to do in this scenario? A transit agency is receiving State or Federal funding to renovate a transit hub and they hire a construction company to complete renovations using state or federal dollars. The transit agency's contract with the construction company is required to have the Buy America clause to receive those funds, the FDOT transit department confirms the required clauses are within the contract. We previously used FDOT Procurement Guidance for Transit Agencies which provided suggested language for FTA clauses (Buy America clause - now it appears it needs to be update).
- A We are working with the Modal Development Office to develop specific guidance regarding this issue. Continue to work with the Modal Development Office.
- Q For most utility work on federal projects, would that be Non-Participating, Exempt?
- A Remember that if one project on a contract has Federal Funds, the entire contract is "Federalized" and must follow the same rules. There is a distinction between "non-participating" and "exempt". Utility work that is performed in conjunction with a Federal project (e.g., LAP) must comply with BABA whether or not the department is participating in the utility reimbursement.
- Q Some pavement markings contain aggregate. Do they get exemption status?
- A Karen is looking at the details for pavement markings and other products. In some cases, we need to look at the "primarily contains..." when identifying which material classification applies. Most pavement markings are not "primarily" aggregate. We can follow-up later with these products.
- Q What if there is a Federal Contract that has a JPA (Phase 56) with the municipality, and the municipality as part of the JPA will furnish a material that does not comply with BABA?
- A Any work being done as part of the Federal construction project, regardless of fund source, must comply.
- Q There is no longer a 90% waiver threshold for iron/steel. There was a court ruling in 2015 that required FHWA to revoke that interpretation of Buy America. See this link: <https://www.fhwa.dot.gov/construction/contracts/160106.cfm>
- A Thank you for this Info from FHWA

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- Q What would be the best resource for those (local government attorney) that will be writing agreements that must incorporate these provisions?
- A Section 6 of the FDOT Standard Specifications was updated and posted here: [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/publications/programmanagementbulletin22-03\\_baba.pdf?sfvrsn=c884e462\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/publications/programmanagementbulletin22-03_baba.pdf?sfvrsn=c884e462_2). It also depends on the fund source and the agency providing the funding. Other US government agencies, such as EPA or HUD, have issued their own guidance. FTA guidance is managed by the modal development office. As a rule of thumb, the department references required clauses in the grant agreements executed with the local governments.
- Q Will all light emitting diode (LED) items within section 715 (Lighting) of the APL be waived from BABA as an electronics solid state item that has insufficient domestic production available accordingly?
- A Luminaires are currently considered a Manufactured Product. We are in the process of identifying where current APL products are manufactured. As needed, we will coordinate with FHWA Florida Division.
- Q What about multiple products that summed together cause a project cost increase of 25% or greater?
- A That project would need to request an 'unreasonable cost waiver.' The waiver must be justified and can only be granted by the head of the Federal agency. FDOT cannot provide the waiver. If this project is administered by FDOT, contact your FDOT Local Agency Coordinator.
- Q What part of FDOT projects would railroad equipment (crossing surface materials and railroad signal equipment) fall under? Category C, Project Specific? It is my understanding that the railroads as vendors are treated as sole source.
- A Regardless of sole source, the domestic requirement is in effect. We are working with the Modal Development Office to develop specific guidance regarding this issue. Continue to work with the Modal Development Office.
- Q Did FHWA make the determination on no self-certification?
- A Yes. We were instructed by FHWA Florida Division to use "due diligence" to determine a product's classification (Iron/Steel, Aggregate, Manufactured Product, Construction Material, etc.)
- Q What was authorization date, November \_\_, 2022?
- A November 10, 2022, for the FHWA waiver. The earlier date may apply for other agencies.

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- Q Can you explain your reasoning on application of BABA to both State and Federal FDOT contracts?
- A Our Standard Specifications and Standards generally apply to all projects. We may be able to allow exemptions if all projects on a contract are confirmed to NOT have any Federal Funds of any type. We will continue to work with the FDOT Work Program Office for guidance.
- Q When will a spec revision be issued for BABA?
- A A Specification revision was issued 12/5/2022. See the link below:  
[https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/publications/programmanagementbulletin22-03\\_baba.pdf?sfvrsn=c884e462\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/programmanagement/publications/programmanagementbulletin22-03_baba.pdf?sfvrsn=c884e462_2)
- Q Are tolling-related items exempt?
- A Regardless of sole source, the domestic requirement is in effect when Federal Funds are used.
- Q Do you have suggested language to include in architects and engineers design solicitations?
- A A simple statement that all designs must comply with BABA is acceptable. This is the sentence added to Spec 6-5.2: Comply with Section 70914 of Public Law No. 117-58, §§ 70901-52, also known as the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, which includes the Build America, Buy America Act (BABA). Domestic compliance for all affected products will be listed on the APL.
- Q Please confirm that, generally, all MOT devices are exempt.
- A A Buy America preference does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. However, in accordance with FDOT Standard Specifications, not all MOT devices are removed at the completion of a project. Therefore, it will depend on the type of MOT device and the project.
- Q Is there a standard supplier "certification form" that we as Local Agencies can use to certify we are receiving "Buy America" Materials for the Local Agency Program (LAP) projects?
- A FDOT is using a manufacturer certification process where compliance is determined by the FDOT Product Evaluation Office. Domestic compliance for all affected products will be listed on the APL.
- Q I have an ARPA funded water main project. Who is my FDOT point of contact for hydrant assembly, gate valve, tapping sleeve, restrained and valve products?
- A Work with the coordinator for the agency administering the funds. If it is FDOT, contact your Local Agency Coordinator.

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- Q Is Thermoplastic traffic stripe material manufactured in China and tested in Europe considered BABA?
- A It depends on the product and how your state is categorizing thermoplastic stripe material. FDOT is using the following criteria based on FDOT Standard Specifications of materials and use: If the thermoplastic contains glass beads or aggregate - it might qualify as a manufactured product and therefore would be exempt; if the thermoplastic does not contain glass beads or aggregate and it is primarily plastic or polymer-based (this could vary by formulation) then it might be a construction material and must be produced in the US; if the thermoplastic is temporary and removeable, then it is not incorporated into the project and is exempt. FDOT utilizes all these types of thermoplastic stripe material, therefore each material will be classified for each Standard Specification were it to be used. A single material may have different classifications when used in work under different specifications.
- Q Should the District Spec offices send TSP's/MSP's to the Product Evaluation office before finalizing it for use on a project?
- A Yes, for now. We are working with the Specifications Office. We may change this process at a later date.
- Q What about Utility work on Federal projects by others? (i.e., Power companies, telecommunications, gas transmission, railroad, etc.)
- A If there are federal funds tied to the project, the utility has to comply. It's a self-certifying process. EV charging stations are getting a waiver.  
<https://www.fdot.gov/programmanagement/utilities/buyamerica.shtm>
- Q If you get a low bid and it includes a non-USA item, can you ask bidder to replace with USA prior to award at same bid price?
- A Not all products are identified at the time of bid. FDOT Specs will require that all products comply with BABA rules. The designer will need to know if no products currently exist to meet the specs/BABA requirements.
- Q Materials procured by the administering agency but expected to be utilized by the contractor for a federal aid construction project, would need to have a public interest finding justifying why the contractors are being required to use it on the project. It would be expected that the requirement be disclosed at the time the project is advertised. The material would need to be compliant with BABA if it is to be incorporated into a federal aid project.
- A Thank you for this Info from FHWA
- Q Can you get a waiver during project construction?
- A That will depend on the directives that you receive from your regional FHWA office.

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- Q If the thermoplastic material properties are not tested according to APL standard and the construction inspector does notice the material has poor properties, how do you proceed?
- A FDOT tests and accepts thermoplastic products in accordance with the FDOT Standard Specifications. Those specifications define the material property and performance criteria to be listed on the APL and how the inspectors are to accept the products at the job site. There is a standard process for reporting suspected material deficiencies. Contact Product Evaluation for additional information.
- Q We will install some Connected Vehicle (CV) devices in one federal aided construction project. These CV devices are not on the FDOT APL. FDOT doesn't have standard spec for these devices. Should we go through the BABA process or can we get exemption.
- A There should be a TSP or MSP for the project defining the CV device requirements. At this time, the waiver for the CV devices has not been adopted. Please go through the Product Evaluation office to get these products listed on the APL.